

REMARKS

Claims 20-23 and 25-28 are pending in this application. Claims 1-19 and 24 have been canceled without prejudice and without acquiescence. Claim 20 has been amended without prejudice and without acquiescence. Support for the amendment can be found in the paragraph [0035] and in original claim 24. Applicants retain the right to file a continuation application on any canceled subject matter. Applicants assert that no new matter has been added. The issues outstanding in this application are as follows:

- Claims 20-22, 27 and 28 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Runge et al (US 6,261,598).

- Claims 20-28 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Runge et al (US 6,261,598).

Applicants respectfully traverse the outstanding rejections, and Applicants respectfully request reconsideration and withdrawal thereof in light of the amendments and remarks contained herein.

I. 35 U.S.C. § 102(b)

Claims 20-22, 27, 28 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Runge (US 6,261,598). The Action states that Runge teaches a composition comprising vitamin E, vitamin C, taurine and a carotenoid. Applicants respectfully traverse.

Anticipation of a claim is only established where “each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegel Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

In order to advance the prosecution of the present application, Applicants have amended independent claim 20 to include concentrations of vitamin C which are not taught by Runge et al. In light of the amendments contained herein, Applicants respectfully request that the rejection be withdrawn.

II. 35 U.S.C. § 103(a)

Claim 20-28 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Runge et al. (US 6,261,598). Applicants respectfully traverse.

Amended claim 20 is directed to a foodstuff comprising vitamin E, a carotenoid and vitamin C in an amount of 10 mg/400 kcal or above. The amount of vitamin C present in the foodstuff, when combined with vitamin E and a carotenoid, provides a particularly effective antioxidant cocktail, as illustrated by Examples 2 to 4.

Runge et al. do not teach a foodstuff comprising vitamin E, a carotenoid and vitamin C in an amount of 10 mg/400 kcal or above. It would not be obvious to one of skill in the art to use this amount of vitamin C in a foodstuff together with vitamin E and a carotenoid. This amount of vitamin C works together synergistically with vitamin E to provide effective antioxidant activity as set out in paragraph 0035 of this specification. Neither this combination of vitamin C and vitamin E, nor the synergistic effect is taught in the prior art.

In light of the amendments contained herein, Applicants respectfully request that the rejection be withdrawn.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2375, under Order No. HO-P02375US0 from which the undersigned is authorized to draw.

Dated: June 8, 2004

Respectfully submitted,

By 

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